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9

**FILED**

FEB - 4 1992

HOWARD HANSON  
MARIN COUNTY CLERK  
by P. Fan, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF MARIN

12 CHURCH OF SCIENTOLOGY )  
INTERNATIONAL, a California )  
13 not-for-profit religious )  
corporation; )  
14 Plaintiff, )  
15 vs. )  
16 GERALD ARMSTRONG; DOES 1 )  
17 through 25, inclusive, )  
18 Defendants. )

Case No. 152229

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
APPLICATION FOR ORDER  
SEALING PORTIONS OF RECORD**

19  
20 I. INTRODUCTION

21 This action was brought by the Plaintiff CHURCH OF SCIENTOLOGY  
22 INTERNATIONAL to enforce a Settlement Agreement (the "Settlement  
23 Agreement") entered into between it and Defendant GERALD ARMSTRONG  
24 on December 6, 1986. The Settlement Agreement contained a provision  
25 which required that the parties keep its terms and conditions  
26 completely confidential. Other provisions required the Defendant to  
27 maintain confidence with respect to his experiences within the  
28 Plaintiff Church, not to aid persons engaged in litigation against

1 Plaintiff, and to refrain from disclosing his experiences within  
2 Plaintiff and his knowledge of the founder of the Scientology  
3 religion, L. Ron Hubbard.

4 The Declaration of Andrew H. Wilson, submitted concurrently  
5 herewith, in support of Plaintiff's application for an Order to Show  
6 Cause re Preliminary Injunction, details some of the instances in  
7 which Defendant has violated the terms of the Settlement Agreement.  
8 The sealing of the Settlement Agreement itself, and any documents  
9 referring to it is appropriate and necessary to protect the  
10 requirement of Plaintiff to keep the agreement confidential.

## 11 II. FACTS

12 Five years ago, plaintiff Church of Scientology International  
13 ("CSI") entered into the Agreement with Armstrong, on its own behalf  
14 and for the benefit of numerous third-party beneficiaries. The  
15 Agreement provided for a mutual release and waiver of all claims  
16 arising out of a cross-complaint which defendant Armstrong had filed  
17 in the case of Church of Scientology of California v. Gerald  
18 Armstrong, Los Angeles Superior Court No. C 420153. Plaintiff  
19 sought, with the Agreement, to end all of Armstrong's activities  
20 against it and other Scientology churches, organizations, and  
21 related individuals and entities, along with the litigation itself.  
22 For that reason, the Agreement contained carefully negotiated and  
23 agreed-upon confidentiality provisions and provisions prohibiting  
24 Armstrong from fomenting litigation against plaintiff by third  
25 parties. These provisions were bargained for by plaintiff to put an  
26 end to the enmity and strife generated by Mr. Armstrong once and for  
27 all.

28 This action arises out of deliberate and repeated breaches by

1 Armstrong of these and other express provisions of the settlement  
2 Agreement. Although plaintiff fully performed all of its  
3 obligations under the Agreement, Armstrong appears to consider that  
4 his obligations under the Agreement ended as soon as he had finished  
5 spending the money he extracted from plaintiff as the price of his  
6 signature. In June, 1991, Armstrong began a systematic campaign to  
7 foment litigation against plaintiff by providing confidential  
8 information, copies of the Agreement, declarations, and "paralegal"  
9 assistance to litigants actively engaged in litigation against his  
10 former adversaries. Although plaintiff has repeatedly demanded that  
11 Armstrong end his constant and repeated breach of the provisions of  
12 the Agreement, Armstrong appears to delight in renewing his annoying  
13 and harassing activities, admitting to them in sworn declarations,  
14 and refusing to end his improper liaisons.

### 15 III. ARGUMENT *Antkowiak*

16 This Court has the inherent power to seal the file, which stems  
17 from its inherent power to "control its own records to protect  
18 rights of litigants before it..." Church of Scientology v.  
19 Armstrong 232 Cal.App.3d 1060. In that case, the court reversed the  
20 lower court's decision unsealing certain portions of the record,  
21 including the settlement agreement which is at issue here. See also  
22 Champion v. Superior Court (1988) 201 Cal.App.3d 777 at 786-87;  
23 Estate of Hearst (1977) 67 Cal.App.3d. 777, 782-783; and Mary R. v.  
24 B&R Corp. (1983) 149 Cal.App.3d 308.

25 The United States Supreme Court has also reaffirmed this  
26 principle in Nixon v. Warner Communications, Inc. 435 U.S. 589  
27 (1988), explaining that denial of access to judicial records may be  
28 appropriate in a variety of situations, including the protection of

1 privacy interests.

2       The California courts have a strong policy of encouraging  
3 settlements and enforcing judicially supervised settlements. Phelps  
4 v. Kozakere (1983) 146 Cal.App.3d 1078, 1082; Fisher v. Superior  
5 Court (1980) 103 Cal.App.3d 434, 437. The issue faced here was  
6 present in In Re Franklin National Bank Securities Litigation (1981)  
7 92 FRD 468 (EDNY), affirmed sub nom Federal Deposit Insurance Corp.  
8 v. Ernst (2d.Cir. 1982) 677 F.2d 230. There, the court refused to  
9 modify a confidentiality order critical to settlement of the case  
10 based upon the "strong public policy favoring settlement of  
11 disputes." Id. at 236. The principles which underlie the ruling of  
12 the Franklin litigation apply here to the sealing of the Settlement  
13 Agreement. The parties bargained for the various terms and  
14 conditions of the Settlement Agreement, including the  
15 confidentiality provision. In fact, Plaintiff would not have  
16 entered into the Settlement Agreement without the inclusion of such  
17 a provision. The various considerations which the Court found  
18 persuasive in Franklin are also present here.

19       The gravamen of the instant complaint is that the Defendant is  
20 engaged in a deliberate campaign against the Plaintiff Church of  
21 Scientology, consisting of numerous and repeated violations of the  
22 Agreement. Those violations include at least three instances in  
23 which the confidentiality provision of the Settlement Agreement was  
24 breached. If this Court does not seal portions of the record which  
25 discuss and/or describe the Agreement, its contents will become  
26 public. Defendant will be able to achieve his goal without concern  
27 for the consequences which should flow from a breach of the  
28 Agreement.

